

Before the
Federal Communication Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Sprint Petition for Declaratory Ruling)	
)	
Obligation of Incumbent LECs to Load)	
Numbering Resources Lawfully Acquired)	
And to Honor Routing and Rating Points)	
Designated by Interconnecting Carriers)	CC Docket No. 01-92
)	
Review of Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act of)	CC Docket No. 96-98
1996)	

COMMENTS
OF SMALL BUSINESS IN TELECOMMUNICATIONS

Small Business in Telecommunications ("SBT"), a non-profit association of small businesses providing goods and services throughout the telecommunications marketplace, hereby comments in support of the Sprint Petition for Declaratory Ruling. SBT's membership includes local and regional operators of Commercial Mobile Radio Service ("CMRS") systems which rely on interconnection with Local Exchange Carriers to receive that telecommunications traffic without which their businesses would not survive. Accordingly, SBT is vitally interested in the outcome of this matter.

The Commission has wisely recognized that the issues involved in this Petition are fundamental to the viable existence and maintenance of competition in the telecommunications

industry. By incorporating this Petition in the existing dockets dealing with the obligations of incumbent Local Exchange Carriers (“LECs”) and implementation of the local competition provisions of the Telecommunications Act of 1996 (“TA-96”), the Commission will be able to enforce the law and stop the LECs from withholding their obvious interconnection obligations with respect to CMRS providers.

Fundamental to the local competition provisions of the TA-96 is the notion that telecommunications carriers are all to be treated on an equal footing. The Local Competition Order specifically states that it was created to “remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition”.¹ With the passage of the TA-96, LECs could not longer be considered a supplier to all and a consumer to none. Unfortunately, LECs are still acting to utilize their monopolistic power over the local telephony market to force CMRS carriers into interconnection relationships where LECs are entitled to charge entities that both place traffic on the LEC’s network and persons receiving traffic from the LEC’s network. This practice goes totally against the articulated goals of the Local Competition Order which states, “[t]he Act directs us and our state colleagues to remove not only statutory impediments to competition, but economic and operational impediments as well.”²

The issues at hand in the Sprint Petition deal with the rating and routing of land-to-mobile call traffic that originates in a landline network and is terminated by a CMRS network. In this instance, there are several fundamental principles that the Commission has clearly stated

¹FCC 96-325 at 1.

²*Id* at 3.

in previous rulings, and which the LECs continue to refuse to honor as their obligations as Public Switched Telephone Network ("PSTN") carriers. In the Local Competition Order the Commission defined the Major Trading Area ("MTA") as the local calling area for CMRS providers.³ This definition is simple to understand and quite explicit in its description of the local calling area as it pertains to CMRS carriers. Notably, the Commission's definition of the CMRS local calling area did not make any distinction between land-to-mobile or mobile-to-land calls. This local calling area definition is both logical and reasonable in light of the ability of CMRS carriers to provision numbering resources within their mobile service areas. This concern and solution with respect to using the MTA as the local calling area was explained in paragraphs 1043 of the Local Competition Order and codified in the Commission's rules at § 51.701.

The Commission has already addressed the obligations of LECs to deliver LEC-originated call traffic to CMRS carriers, and specifically stated in paragraph 1042 of the Local Competition Order, "We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic." Additionally, the Commission specifically addressed the delivery of call traffic to CMRS carriers in paragraph

³*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* CC Docket No. 96-98 and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers* CC Docket No. 95-185 **FIRST REPORT AND ORDER** Rel. August 8, 1996.

§ 51.701 Scope of transport and termination pricing rules.

(b) *Local telecommunications traffic*. For purposes of this subpart, local telecommunications traffic means:

(2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

1042, "As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge." The LECs have objected to these principals by attempting to charge CMRS carriers, and in particular one-way paging carriers, for the facilities they use to deliver call traffic to the carriers. The Commission's TSR Wireless Order⁴ specifically dealt with this issue and the transport and termination of local call traffic by CMRS carriers and reiterated that both the Local Competition Order and TA-96 mandate that the LECs treat intra-MTA call traffic as local.

Now the LECs, such as BellSouth in this instance, are attempting to duck their obligations once again under the false premise that the traditional landline designated local calling area somehow defines the "local" calling area for land-to-mobile calls. Although the LECs would have it otherwise, the issue is not new, has been thoroughly discussed and argued before the Commission, and the conclusion is as noted in the 1996 Local Competition Order at paragraph 1043.

We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.

Clearly, and for good reason, the Commission did not address or specify the direction of call traffic when making this statement. It would be ludicrous to make traffic in the mobile-to-land direction local, but somehow allow calls from land-to-mobile to be made toll by the LECs.

⁴ TSR Wireless, LLC. et al. v. US West Communications, Inc.. et al. , File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 (2000).

However, this is exactly what BellSouth proposes in its Opposition to Sprint's Petition for Declaratory Ruling. In its Opposition, BellSouth makes the statement, "While BellSouth will carry and recognize NXX assignments of Sprint and other Commercial Mobile Radio Service ("CMRS") providers that require BellSouth to route traffic in a manner inconsistent with its rating points, BellSouth nevertheless believes that such arrangements as currently constituted result in, at a minimum, inappropriate intercarrier compensation."

The more apparent problem is not "inappropriate intercarrier compensation" caused by the provisioning of Sprint's, or other CMRS NXX codes, but rather the outmoded and obviously unsuited practice of designating historic, but now unsuitable, state approved rate centers⁵ to be associated with NXX codes or thousands block numbering resources assigned to CMRS carriers whose federally defined local calling area is the entire MTA. The Commission has mentioned this problem previously in their Numbering Resource Optimization Order⁶ where the consolidation of rate centers is listed as one of the best ways to alleviate the problems associated with Numbering Plan Area ("NPA") exhaust.

The Commission has clearly designated the local calling area for CMRS carriers, and this designation obviously takes precedence over the state approved local calling area rate centers. In essence, the Commission's rules pertaining to the MTA being the local calling area for CMRS calls preempts any state designation with respect to the rating of a "local" (Intra-MTA) CMRS terminated call, regardless of the routing of that call.

⁵The specific geographic point which has been designated as being associated with a particular NPA-NXX code which has been assigned to a carrier for its provision of telecommunications service.

⁶FCC 99-200, Rel. July 11, 2000.

There is another more glaring error in BellSouth's position on this matter. As noted in the BellSouth Opposition, it is BellSouth's "position that when a CMRS provider does not interconnect directly with the independent ILEC and insists that BellSouth arrange for the transmission of these local calls with rate centers within the independent ILEC's calling area and routing points within BellSouth's calling area, then all parties should be compensated correctly for the costs incurred for provision of the service." This is obviously a case of mistaken identity on the part of BellSouth. BellSouth apparently believes that Sprint, a CMRS carrier, as the terminator of the call traffic is somehow responsible for arranging the transmission of the land-to-mobile calls as well as BellSouth's costs associated with this call traffic. This is obviously not true and flies in the face of historic and legal precedent, as well as the Commission's long stated rules.

The Independent Local Exchange Carrier ("ILEC"), if it is the originator of the call traffic, is responsible for the delivery of the call traffic to Sprint's point of interconnection ("POI") with the PSTN including any "arrangements" with BellSouth for call handling. If BellSouth is the originator of the call traffic, it is responsible for the delivery of the call traffic to the Sprint POI. Sprint is not involved or responsible for the call, in any way, until it reaches the Sprint POI. As a clear matter of logic and law, the Commission cannot hold Sprint, or for that matter, any CMRS carrier, responsible for land-to-mobile call traffic that has not yet been sent to the CMRS POI, because the terminating carrier has no control whatsoever over the traffic until it reaches that POI.

Even where the carriers use common channel signaling with SS7 protocol, the terminating carrier can only refuse to accept the call, but otherwise has no control over how it is

routed prior to the POI trunk group. Obviously, how the call is routed within networks is of no consequence to the terminating carrier and is not germane to the terminating carrier once the call is delivered to the POI. Routinely, the routing of a call within a network and even between networks, can take many different paths depending on traffic loads and other circumstances. In the scenario described by BellSouth, the dilemma, if there is one, is between BellSouth and the regulatory/administrative agencies, and should be resolved in the context of the provisioning and assignment systems associated with the North American Numbering Plan ("NANP") and not with Sprint or other terminating CMRS carrier. BellSouth's comments attempting to place call responsibility on Sprint and not the originating carrier, reflect the pre-TA-96, monopoly attitude of the LECs and are not in concert with the realities and regulatory rules of a competitive market.

BellSouth's Opposition also incorrectly describes the interconnection arrangements between Sprint, BellSouth and Alltel. In paragraph 5 (p.3) of the BellSouth Opposition, "Under Sprint's arrangement, the rating point is in BellSouth territory but the routing is outside BellSouth territory to independent ILEC territory." This statement is not true according to the Sprint Petition and diagram at page 8. Under Sprint's actual arrangement, the routing point is in BellSouth territory but the rating point is outside BellSouth territory in ILEC territory. Basically, BellSouth's description, placing the Sprint rating point within its territory totally changes the nature of BellSouth's objection and position and has no bearing on the Sprint Petition. This is obviously not a typographical error because footnote 2 on page 3 re-states the BellSouth position in the form of a question regarding BellSouth's routing traffic outside its exchange area. "Underlying these questions is whether in routing traffic outside of its exchange

area, BellSouth is acting in a manner that is inconsistent with its state certificate of authority.” However, as a practical matter, BellSouth does not, according to the Sprint diagram, currently route traffic outside its territory and only proposed to do so in the future. In addition, BellSouth’s description on page 8 of its Opposition also is not consistent with its January 30, 2002 Carrier Notification letter. “BellSouth will not support activations of NPA/NXX codes where the rate center is in a company other than BellSouth and the routing center is inside BellSouth.” This ill-advised attempt to subtly change the parameters involved in the Sprint Petition should be noted as a blatant attempt to manipulate the regulatory process to BellSouth’s advantage. Nowhere in Sprint’s Petition does Sprint propose that BellSouth route traffic outside of BellSouth territory. The BellSouth objection, as stated in their Notification Letter, is the rating of calls outside their territory, and not anything about the routing of calls outside BellSouth territory. This attempt to confuse and obfuscate the issues should not be taken lightly by the Commission. This BellSouth tactic appears to be a convenient way to direct the Commission’s attention away from the real issues and toward nullifying the competition provisions of the Telecommunications Act of 1996.

Indeed, the dispute is not between Sprint and BellSouth, as BellSouth describes in paragraph 7 of its Opposition, but is properly between BellSouth and the NANP with respect to the rules for provisioning and rating numbering resources. It is readily apparent that Sprint is simply following the rules as currently constituted which are designed to allow the most efficient and least costly handling of inter-carrier calls. The landline rating, for state administered purposes, of Intra-MTA calls destined for a CMRS carrier such as Sprint, has no bearing on

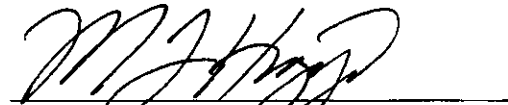
BellSouth's or other LEC's obligations to treat the calls as local under TA-96 and the Commissions rules.

Conclusion

For all the foregoing reasons, SBT supports Sprint's Petition for Declaratory Ruling, and requests the Commission act in accord with the mandates of TA-96 and the rules promulgated thereunder, and help foster true competition in the provision of telecommunications services to the public, by putting a stop to the monopolistic and predatory practices of LECs against CMRS carriers.

Respectfully submitted,

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Certificate of Service

I, Ava Leland, do hereby swear that on this date, August 8, 2002, a copy of the foregoing Comments of Small Business in Telecommunications, was hand delivered or sent via U.S. Mail to the following:

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